IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 1452 of 2007(W)

PETITIONER:

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1. THE MANAGER,
ST.ANTONY'S PUBLIC SCHOOL,
KIZHAKKAMBALAM-686 562, ERNAKULAM DISTRICT,
REPRESENTED BY ITS MANAGER FR. VARGHESE MANAVALAN.

2. PAUL VARGHESE,
PRESIDENT, PARENT TEACHER ASSOCIATION,
ST.ANTONY'S PUBLIC SCHOOL,
KIZHAKKAMBALAM-686 562, ERNAKULAM DISTRICT.

BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SMT.TULASI PANICKER

RESPONDENTS:

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1. STATE OF KERALA, REP. BY
SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE PRINCIPAL OFFICER,
CENTRAL BOARD OF SECONDARY EDUCATION,
(AFFILIATION UNIT), AMC CELL, PREETH VIHAR,
DELHI-110 092.

BY ADV. SRI.DEVAN RAMACHANDRAN
GOVERNMENT PLEADER SRI.A.J.VARGHESE.
ADVOCATE GENERAL SRI.C.P.SUDHAKARA PRASAD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON 20/7/2007 DELIVERED THE FOLLOWING:

APPENDIX (WP.1452/2007)

PETITIONERS' EXHIBITS:

EXT.P1: TRUE COPY OF INSTRUCTIONS ISSUED BY CBSE.

EXT.P2: TRUE COPY OF LETTER DT. 30/9/2005.

EXT.P3: TRUE COPY OF LETTER DT. 13/10/2005.

EXT.P4: TRUE COPY OF SUBSEQUENT REPORT SENT BY D.E.O. TO D.P.I.

EXT.P5: TRUE COPY OF JUDGMENT DT. 29/6/2006 IN WP.16815/2006

EXT.P6: TRUE COPY OF ORDER DT. 26/8/2006 OF R1.

EXT.P7: TRUE COPY OF JUDGMENT DT. 8/11/2006 IN WP.25267/2006.

EXT.P8: TRUE COPY OF ORDER OF R1 DT. 15/12/2006.

RESPONDENTS' EXHIBITS:

EXT.R1(A): GO.(RT)3691/06/G.EDN DT. 19/8/2006.

A.K. Basheer, J.

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W.P(C) No. 1452 of 2007

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Dated this the 20th day of July, 2007

Judgment

Petitioner No.1 is the Manager of St.Antony's Public School at Kizhakkambalam in Ernakulam District. Petitioner No.2 is the President of the Parent-Teachers' Association of the school. Petitioners impugn Ext.P8 order passed by the Government rejecting the application for grant of No Objection Certificate for affiliation to the Central Board of Secondary Education.

2. This is the second round of litigation for the same relief as far as the management is concerned. In the previous round, the Manager and some of the parents had approached this Court with a grievance that the Government was dragging its feet in the matter of grant of NOC. In Ext.P7 judgment this Court had directed the Government to take a decision on the application submitted by the management on or before December 15, 2006. As could be seen from the above judgment, this Court had considered the Visit Report submitted by the District Educational Officer, Aluva and other relevant materials on record. The stand of the Government at that time was that it was awaiting the report of the High Power Committee constituted for the purpose of formulating policy parameters for sanctioning of new schools, upgradation of existing schools, etc. Admittedly the

guidelines framed by the Government in the year 1988 governed the field at the time when petitioner No.1 had applied for grant of NOC. The High Power Committee had not yet submitted its report and therefore the Government had not come out with new guidelines or policy parameters.

3. Having considered all the above aspects including the fact that the guidelines formulated by the Government still governed field and the Departmental Officer had in his report taken a very favourable view for grant NOC to the petitioner, this Court had observed that the Government was not justified in refusing to take a decision on the application submitted by the petitioner. Therefore the Government was directed to pass orders on the application before December 15, 2006. The following observations in Ext.P7 judgment are relevant:

> 5. It is pertinent to note that in the case on hand, the Institution had started functioning in the year 2004-05. Students have been admitted in Stds. I to VII. The Controlling Officer had assessed the educational need in the area and had strongly recommended the case of the petitioners. The Government has to necessarily keep in view all the above aspects while considering the request of the

management for grant of N.O.C.

6. In this context it has to be noticed that the Government does not have a case that the existing guidelines in the matter of grant of N.O.C are not in force now. Those guidelines will govern the field. It may be true that the Government has constituted a new Committee to evolve new policy parameters and to recommend principles and guidelines to be followed by the Government for upgradation and recognition of existing schools and also for grant of N.O.C to C.B.S.E affiliated institutions. It may also be true that a deadline had already been fixed by the Government for the Committee to submit its report. But that does not mean that the request made by the petitioners should be kept in cold storage till the Committee submits its report recommending fresh guidelines/principles or new policy parameters.

7. As noticed earlier, the Controlling Officer of the educational district concerned has already submitted Ext.P5 report. Therefore the Government will be in a position to take a decision on the application submitted

> by the management without waiting for the report of the Committee. I am persuaded to take the above view in the peculiar facts and circumstances of this case, especially since the institution in question is unaided. Grant of N.O.C may not involve any additional financial burden to the Government. More importantly, the future of a large number of young children is at stale. The anxiety of the parents of these children will have to be necessarily kept in view."

4. Learned Advocate General submits that Government had considered the application submitted by the petitioner as directed by this Court in Ext.P7 judgment and found that NOC cannot be granted to the petitioner before fresh guidelines were finalised. He submits that the decision taken by the Government cannot be faulted since the Government thought that it would be appropriate if his request was considered after the new guidelines were brought into force.

5. It cannot be disputed that Ext.P7 judgment had become final. This Court had taken the view that petitioner's application was liable to be considered in terms of the then existing guidelines. Learned Advocate General fairly submits that the Government is bound by the decision in Ext.P7 judgment and that the matter will be reconsidered in compliance with the directions in Ext.P7 judgment.

6. There is considerable force in the contention raised by the learned counsel for the petitioners that the Government was equally bound by the other observations made by this Court in the same judgment with regard to the entitlement of the petitioner to get NOC. He places heavy reliance on recommendation made by the Controlling Officer in his Visit Report. Undoubtedly the Officer in his report, a copy of which is on record as Ext.P4, had considered all the relevant parameters for grant of NOC. While referring to the nearby schools which are situated between 0.5 kms. and 2.5 kms. the Officer had noticed that in all those schools the medium of instruction was Malayalam and that petitioner's school which follows CBSE syllabus would not in any way affect the strength of pupils there. More importantly, the Officer found that the school campus was situated about 300 meters away from Aluva-Thripunithura Road in a land having an extent of 2.175 acres. A multi storied building had been constructed by the management for which a fitness certificate had already been issued by the competent authority. Facilities for drinking water, sanitation etc. were also provided. A good library with more than 1500 books was also available in the school. A play ground, meeting hall etc. were also provided in the school campus.

7. A perusal of the Visit Report shows that the Officer had taken care to check up all the relevant parameters necessary for grant of affiliation. While concluding the report, the Officer had stated that “it was necessary to extend No Objection Certificate” to petitioner's school. He had accordingly recorded his recommendation

in the report.

8. Reference has been made to the above report rather extensively since learned counsel submitted that the Government could not have, under normal circumstances, rejected the application for grant of NOC. He submits that Ext.P8 order has been passed by the Government in a mechanical manner without even bothering to consider the relevant materials. I am inclined to agree. In Ext.P8 order, it is seen stated that the Government had recently issued orders permitting Govt./aided/unaided schools to introduce "English medium parallel divisions" in Stds.I, V and VIII, if there are 2 or more class divisions in the standard concerned. The order further states that 30 pupil were willing to study in English medium classes in each standard in three of the 5 schools mentioned in the Visit Report in which parallel divisions in English medium had been started. The attempt of the Government seems to be to contend for the position that if petitioner's school is granted NOC, the parallel English divisions in the 3 neighbouring schools may be adversely affected.

9. Admittedly, the 3 schools referred to in Ext.P8 order do not follow CBSE syllabus. It may be true that there are parallel divisions of English medium classes with a strength of 30 students each in 3 neighbouring schools. That is the sole reason which is stated in Ext.P8 order to reject petitioner's application. Curiously, it is further stated in Ext.P8 order that the Govt. "do not consider it as a matter of immediate public interest to provide NOC for CBSE affiliation to the petitioner's school before the fresh guidelines are finalised". The above

view taken by the Govt. cannot be countenanced especially for the reason that this Court in Ext.P7 had found that petitioner's application had to be considered in terms of the old guidelines. Similarly, the Departmental Officer in his Visit Report had recommended grant of NOC. In the absence of any valid reasons to reject the report, I do not find any justification on the part of the Government to decline NOC to the petitioner's school. In any view of the matter I am satisfied that Ext.P8 cannot be sustained.

Therefore the Writ Petition is allowed. Ext.P8 is quashed. Government shall pass appropriate orders in the light of the observations made above. This shall be done as expeditiously as possible, at any rate on or before July 31, 2007.

A.K. Basheer

Judge.

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, 1486, 5191, 4149,

7611, 7986, 8120, 15558, 15813,

16835, 16644,16843, 16844, 18735,

18846, 19720, 19723, 19878,

& 19270 of 2007

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Dated this the 29th day of June, 2007.

O R D E R

Having heard learned counsel for the parties and having regard to the peculiar facts and circumstances and the time constrain, it is directed that the last date for presentation of application to the C.B.S.E by the respective managements shall remain extended till July 31, 2007.

Hand over.

A.K. Basheer

Judge.

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A.K. Basheer, J.

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W.P(C) Nos. of 2007

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Dated this the ---- day of September, 2007.

J U D G M E N T

The short but important question that has been raised in this bunch of writ petitions is whether the Government of Kerala is justified in taking a policy decision to refuse to issue No Objection Certificates to the private unaided schools in the entire State, barring 5 Districts and that too only in certain areas of those districts where extreme educational backwardness among the members of a particular religious community persists. In the nature of the commonality of the issue, it may not be necessary to refer to the individual grievances of the petitioners as highlighted by them in their respective writ petitions. But the common thread is that the applications submitted by the petitioners for grant of No Objection Certificate for affiliation is being refused to be considered by the Government in the light of its order (G.O(P)107/07/G.Edn) dated June 13, 2007. It is contended by the petitioners that the Government cannot as a mater of policy refuse to issue No Objection Certificate for affiliation to start CBSE/ICSE schools by issuing such a blank prohibition, while granting the benefit to the applicants from a handful of districts and that too restricting to a particular religious community.

The Central Board of Secondary Education is an autonomous

body working under the aegis of the Ministry of Human Resource Development under the Government of India. Admittedly Central Board of Secondary Education is not a statutory body. The Board came into existence in the year 1929. The main objectives of the CBSE are stated to be :

(a) to affiliate institutions in and outside the country.

(b) to conduct annual examinations at the end of Class X and Class XII and

(c) to conduct entrance examinations to professional courses for admission into Medical and Engineering colleges.

The CBSE is governed by its bye-laws called as Central Board of Secondary Education Affiliation Bye-laws. These bye-laws came into effect from January 28, 1988. Clause 2(1)(i) in Chapter I of the bye-laws refers to "Affiliation" which means "formal enrollment of a school among the list of approved schools of the Board following prescribed/approved courses to study upto Class VIII as well as those preparing students according to prescribed courses for the Board's examinations". No Objection Certificate is defined in the bye-laws as "a letter issued by the appropriate authority of the Education Department of the State/Union Territory in respect of school situated in the State/Union Territory for affiliation of the school to the CBSE". Clause 3(1) of Chapter II of the affiliation bey-laws stipulates that the school seeking provisional affiliation with the Board must have formal prior recognition of the State/Union Territory Government (emphasis supplied). It is further provided that the application "either should be

forwarded by the State Government or there should be a No Objection Certificate to the effect that State Government has no objection to the affiliation of the school with the CBSE."

The above clause unambiguously shows that No Objection Certificate from the State Government concerned is a mandatory pre-requisite for affiliation to the CBSE. It is contended by the respondent/State that issuance of No Objection Certificate can only be subject to the policy decision of the Government. The Government has to necessarily keep in view the socio economic conditions of the student community in general, especially those belonging to the poorer sections of the student community while formulating the education policy. It is contended by Sri.C.P.Sudhakara Prasad , learned Advocate General that the anxiety of the Government is only to ensure that the less affluent students are not deprived of opportunity to attend schools According to the learned Advocate General, uncontrolled proliferation of CBSE schools in the State will adversely affect Government/aided schools which collect only lesser fees as compared to the CBSE schools. He contends that many of the Government/aided schools are facing threat of closure due to the sudden spurt in the growth of CBSE schools. Many teachers in the Government/aided schools are facing threat of retrenchment due to fall in divisions which is the direct consequence of fall in student strength in those schools. The case of the respondent is that more and more students are flocking to CBSE schools, the number of which has now risen to 529. This figure, according to the respondent, is very high as compared to other States in

the country, especially the southern States of Tamil Nadu, Karnataka and Andhra Pradesh. It is pointed out that State of Kerala ranks as third in the number of CBSE schools in the country. A chart showing the number of CBSE schools in the various States has been incorporated in the additional counter affidavit. There are 12644 schools in the State, apart from the CBSE schools referred to above. Out of the 12644 schools, 4498 are run by the Government while 7290 are private aided schools. The remaining 856 are private unaided schools. The Government had noticed that Muslim community in the 5 districts of Kasargod, Kannur, Kozhikode, Wayanad and Malappuram has been facing "educational backwardness". In the 5 districts in which Muslim population is comparatively high, educational facilities have been found to be inadequate. The Government therefore thought it fit to issue No Objection Certificate for affiliation to the CBSE/ICSE, if the schools applying for such No Objection Certificate satisfied the other stipulations contained in the order of the Government and also subject to the other statutory parameters contained in Chapter V of the Kerala Education Rules. It is further contended by the respondents that the provisions contained in Chapter V KER will govern the field in the matter of grant of NOC for affiliation. The Government is entitled to consider whether there is educational need in the area where the CBSE school is proposed to be established, apart from other policy parameters and statutory requirements. The applicants cannot as of right demand that the Government is bound to issue No Objection Certificate for its mere asking. If only the Government is satisfied that

the proposed CBSE school cater to the educational need of the students in that particular area, then only the Government will issue N.O.C. It was therefore that the Government had prescribed certain conditions in the matter of grant of No Objection Certificate. While identifying the 5 districts which were educationally backward vis-a-vis a particular community, the Government wanted to ensure that the school seeking affiliation had started functioning on or before June 1, 2000 and that it should have a minimum of 5000 students on its roll. The other condition is that the school should have classes from I to X. It is contended by the respondents that the above restrictive clauses contained in the order of the Government are not at all arbitrary since they have been incorporated to achieve the Governmental policy of ensuring easy access to education to the poorer section of the student community.

It is contended by the petitioners that the Government cannot refuse to grant N.O.C on the spacious plea that the Government/aided schools in the area concerned will face threat of closure by opening of CBSE schools in that area. Petitioners are not seeking any aid from the Government and therefore there will be no financial liability on the Government if the schools are allowed to function. Petitioners are interested to equip the future generation with quality education so that they are able to compete with others coming from other parts of the country. The curriculum and syllabus followed by the CBSE have been maintaining a very good standard as compared to the other streams of education. Further, students studying in CBSE schools will find it

convenient to get admission in other CBSE schools in any part of the country, even if their parents are transferred in connection with their employment. The educational need envisaged in Chapter V KER has no relevance as far as the yardstick or criterion to be adopted for the purpose of grant of N.O.C for affiliation to the CBSE. It may be true that in the matter of opening of new schools, which follow the Kerala syllabus, the different parameters envisaged in Chapter V may have some relevance. But the CBSE syllabus being totally distinct and different from the Kerala syllabus, the respondents are not justified in contending that grant of NOC will be governed by the provisions contained in Chapter V KER.

In this context it is pertinent to note that No Objection Certificates for affiliation were being issued by the Government in the past in terms of the guidelines/stipulations contained in G.O (Ms).18/88/G.Edn. dated January 12, 1988. A large number of private unaided institutions in the State have got affiliation till 2004-05 on the basis of the above order. But it appears that during 2006 the application submitted by the petitioners and several others were refused to be entertained on the ground that the Government was waiting for the report of a High Level Committee constituted by the Government to recommend "the principles and guidelines to be followed in sanctioning new schools, upgrading and recognising existing schools and for giving N.O.C for CBSE/ICSE affiliated institutions". The Government had issued G.O. (Rt).3691/06/G.Edn. dated August 19, 2006 in this connection in which it was mentioned that the Government felt it necessary to lay down the principles and guidelines to be followed in the matter in view of the "mounting demand" for sanctioning new schools. It was further mentioned that "the social impact of sanctioning new schools, the consequences to other institutions and employees in them as well as the financial repercussions of the State exchequer are also be kept in view while sanctioning new schools. Schools cannot be sanctioned or upgraded to satisfy the demands of existing school Managers. It is also necessary to avoid ad hoc and haphazard decision for sanctioning new schools as such decision will cause dis-satisfaction and will lead to litigation. The present situation is that the schools are increasing but the student population is decreasing. The educational need of a locality has

to be rationally and realistically assessed and modalities for the same have to be determined".

The Government had constituted the High Level Committee comprising the Principal secretary to Government, General Education Department, Director of Public Instruction, Director of Higher Secondary Education and Director for Vocational Higher Secondary Education for the above purpose. It was after obtaining the report from the above Committee that the Government had issued order dated June 13, 2007 in which the policy parameters and guidelines were set out. It is stated in the said order that the Government has made it clear that N.O.C for affiliation to CBSE will be entertained only from among the applications to be received from the 5 districts referred to above. Petitioners seek to quash the above Government Order to the extent it impinges upon their right to get N.O.C for affiliation. In this context it will be convenient to notice the relevant clauses in the above order of the Government which deal with recognition of unaided schools and N.O.C for CBSE/ICSE schools. The relevant clauses are extracted hereunder:

> "2. Recognitin of unaided schools and NOC for CBSE/ICSE schools:
>
> 1. As a policy, un-aided unrecognized schools will not be given recognition.
>
> 2. In order to overcome the educational backwardness of the Muslim Community, recognition will be granted and NOC for starting

CBSE/ICSE schools shall be issued to those unaided schools satisfying the following conditions apart from those specified in the Kerala Education Rules as the Government are convinced that extreme educational backwardness among the members of the Muslim Community persists in certain areas of Malappuram, Kozhikode, Kasargod, Kannur and Wayanad Districts. Accordingly applications will be limited to the above districts alone. The additional conditions are the following:--

a) The school shall have started functioning on or before 01.06.2000.

b) The School shall have a minimum of 500 students on its roll.

c) The school shall have classes from 1 to 10.

d) The school shall be functioning in a socially and educationally backward locality.

3. In the event of non-adherence to the conditions and non-maintenance of quality standards by schools affiliated to CBSE/ICSE with Government's NOC, the matter of withdrawal of recognition / NOC will be taken up with Central Government."

It is contended by the petitioners that the very premise under which the above order has been issued by the Government indicates that the Government intends to curtail the right of managements to

start CBSE schools in the private unaided sector. Such an attempt is wholly illegal, arbitrary and unsustainable. The rights guaranteed under the Constitution will be at peril if the above attempt is allowed to materialise. It is also pointed out by the learned counsel that the conditions imposed in clause (2) of the order extracted above are totally unworkable and aimed at to throttle the legitimate right of managements to start schools with CBSE syllabus. Taking strong exception to the so called policy parameters as indicated by the Government in its order dated August 19, 2006 it is contended by the petitioners that the view taken by the Government is totally lopsided and unimaginative.

A.K. Basheer

Judge.

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